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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELISSA M. ROBERTS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

BLOOM ENERGY CORPORATION, et al.,
Defendant.

Case No.: 4:19-cv-02935-HSG

STIPULATED PROTECTIVE
ORDER

1 This Stipulated Protective Order (“Order”) is meant to govern the use of, and protect from
2 public disclosure, any non-public and confidential or proprietary or private information used or
3 disclosed in this litigation.

4 **1. PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of
6 confidential, proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
8 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
9 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
10 all disclosures or responses to discovery and that the protection it affords from public disclosure
11 and use extends only to the limited information or items that are entitled to confidential treatment
12 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
13 below, that this Stipulated Protective Order does not entitle them to file confidential information
14 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
15 that will be applied when a party seeks permission from the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
20 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule
21 of Civil Procedure 26(c) and other proprietary or private information warranting special protection
22 from public disclosure and from use for purposes other than prosecuting this litigation.

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
24 well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the
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1 medium or manner in which it is generated, stored, or maintained (including, among other things,
2 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
3 responses to discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
5 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
6 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
7 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
8 of a Party's competitor.

9 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
10 Items: Any Disclosure or Discovery Material that a Producing Party believes in good faith to
11 contain highly sensitive "Confidential Information or Items," disclosure of which to another Party
12 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
13 restrictive means.

14 2.8 House Counsel: attorneys who are employees of a party to this action. House
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
17 entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
19 action but are retained to represent or advise a party to this action and have appeared in this action
20 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

21 2.11 Party: any party to this action, including all of its officers, directors, employees,
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.13 Professional Vendors: persons or entities that provide litigation support services
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
27 organizing, storing, or retrieving data in any form or medium) and their employees and
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1 subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
3 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only Protected Material
8 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
9 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
11 However, the protections conferred by this Stipulation and Order do not cover the following
12 information: (a) any information that is in the public domain at the time of disclosure to a
13 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
14 a result of publication not involving a violation of this Order, including becoming part of the public
15 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
16 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
17 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
18 use of Protected Material at trial shall be governed by a separate agreement or order.

19 **4. DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations imposed by this
21 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
22 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
23 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
24 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
25 including the time limits for filing any motions or applications for extension of time pursuant to
26 applicable law.

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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or Non-Party that designates information or items for protection under this Order must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards. To
5 the extent it is practical to do so, the Designating Party must designate for protection only those
6 parts of material, documents, items, or oral or written communications that qualify – so that other
7 portions of the material, documents, items, or communications for which protection is not
8 warranted are not swept unjustifiably within the ambit of this Order.

9 Indiscriminate or routinized designations are prohibited, although the designation of
10 substantially all of a Party's production of documents as Protected Material, if otherwise
11 appropriate under this Protective Order, will not render such designation improper. Designations
12 that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
14 and burdens on other parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it designated
16 for protection do not qualify for protection at all or do not qualify for the level of protection initially
17 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
18 mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
26 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY" to each page that contains protected material. If only a portion or portions of the material
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1 on a page qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
3 portion, the level of protection being asserted.

4 A Party or Non-Party that makes original documents or materials available for inspection
5 need not designate them for protection until after the inspecting Party has indicated which material
6 it would like copied and produced. During the inspection and before the designation, all of the
7 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
9 copied and produced, the Producing Party must determine which documents, or portions thereof,
10 qualify for protection under this Order. Then, before producing the specified documents, the
11 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.
13 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
14 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
15 margins) and must specify, for each portion, the level of protection being asserted.

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
17 the Designating Party identify on the record, before the close of the deposition, hearing, or other
18 proceeding, all protected testimony and specify the level of protection being asserted. When it is
19 impractical to identify separately each portion of testimony that is entitled to protection and it
20 appears that substantial portions of the testimony may qualify for protection, the Designating Party
21 may within 21 days after receipt of the transcript identify the specific portions of the testimony as
22 to which protection is sought and specify the level of protection being asserted by notifying the
23 court reporter and all Parties, in writing. A Designating Party may also specify, at the deposition
24 or up to 21 days after receipt of the transcript, that the entire transcript shall be treated as
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other parties notice if they reasonably expect a deposition, hearing,
27 or other proceeding to include Protected Material so that the other parties can ensure that only
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1 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
3 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
4 – ATTORNEYS’ EYES ONLY.”

5 Transcripts containing Protected Material shall have an obvious legend on the title page
6 that the transcript contains Protected Material, and the title page shall be followed by a list of all
7 pages (including line numbers as appropriate) that have been designated as Protected Material and
8 the level of protection being asserted by the Designating Party. The Designating Party shall inform
9 the court reporter of these requirements. Before the expiration of a 21-day period for designation,
10 any transcript shall be treated during that period as if it had been designated “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
12 the expiration of that period, the transcript shall be treated only as actually designated.

13 (c) for information produced in some form other than documentary and for any
14 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
15 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
16 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of
17 the information or item warrant protection, the Producing Party, to the extent practicable, shall
18 identify the protected portion(s) and specify the level of protection being asserted.

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party’s
21 right to secure protection under this Order for such material. Upon timely correction of a
22 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
23 in accordance with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
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1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
5 by providing written notice of each designation it is challenging and describing the basis for each
6 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
7 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
8 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
9 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
10 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
11 Party must explain the basis for its belief that the confidentiality designation was not proper and
12 must give the Designating Party an opportunity to review the designated material, to reconsider
13 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
14 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
15 has engaged in this meet and confer process first or establishes that the Designating Party is
16 unwilling to participate in the meet and confer process in a timely manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
18 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
19 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
20 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
21 process will not resolve their dispute, whichever is earlier.¹ Each such motion must be
22 accompanied by a competent declaration affirming that the movant has complied with the meet
23 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
24 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
25 shall automatically waive the confidentiality designation for each challenged designation. In

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27 ¹ After three challenges, the burden to move is on the Challenging party to avoid an abuse of the
28 process. The burden of persuasion remains on the Designating Party.

1 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
 2 time if there is good cause for doing so, including a challenge to the designation of a deposition
 3 transcript or any portions thereof. Any motion brought pursuant to this provision must be
 4 accompanied by a competent declaration affirming that the movant has complied with the meet
 5 and confer requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating
 7 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 8 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 9 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 10 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 11 material in question the level of protection to which it is entitled under the Producing Party's
 12 designation until the court rules on the challenge.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 15 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 17 the categories of persons and under the conditions described in this Order. When the litigation has
 18 been terminated, a Receiving Party must comply with the provisions of Section 15 below (FINAL
 19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location and in
 21 a secure manner that ensures that access is limited to the persons authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 23 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 24 information or item designated "CONFIDENTIAL" only to:

25 (a) the Parties' Outside Counsel of Record in this action, as well as employees of
 26 said Outside Counsel of Record to whom disclosure is reasonably necessary for this litigation;

27 (b) the officers, directors, and employees (including House Counsel) of the Parties
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1 to whom disclosure is reasonably necessary for this litigation and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants, and
8 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
14 separately bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information or a custodian
17 or other person who otherwise possessed or knew the information.

18 (h) Mediators or arbitrators, and their support personnel, engaged by the Parties for
19 settlement purposes in this Action and who have signed the “Acknowledgment and Agreement to
20 Be Bound” (Exhibit A)

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
22 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
23 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

25 (a) the Parties’ Outside Counsel of Record in this action, as well as employees of
26 said Outside Counsel of Record to whom disclosure is reasonably necessary for this litigation;

27 (b) House Counsel of the Parties to whom disclosure is reasonably necessary for
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1 this litigation;

2 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
3 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been
5 followed;

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants, and
8 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (f) the author or recipient of a document containing the information or a custodian
11 or other person who otherwise possessed or knew the information;

12 (g) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
15 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
16 separately bound by the court reporter and may not be disclosed to anyone except as permitted
17 under this Stipulated Protective Order; and

18 (h) Mediators or arbitrators, and their support personnel, engaged by the Parties for
19 settlement purposes in this Action and who have signed the “Acknowledgment and Agreement to
20 Be Bound” (Exhibit A).

21 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

23 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
24 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
25 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
26 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies
27 the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
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1 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the
2 full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy
3 of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each
4 person or entity from whom the Expert has received compensation or funding for work in his or
5 her areas of expertise or to whom the expert has provided professional services, including in
6 connection with a litigation, at any time during the preceding five years,² and (6) identifies (by
7 name and number of the case, filing date, and location of court) any litigation in connection with
8 which the Expert has offered expert testimony, including through a declaration, report, or
9 testimony at a deposition or trial, during the preceding five years.

10 (b) A Party that makes a request and provides the information specified in the
11 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
12 within 14 days of delivering the request, the Party receives a written objection from the
13 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

14 (c) A Party that receives a timely written objection must meet and confer with the
15 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
16 within seven days of the written objection. If no agreement is reached, the Party seeking to make
17 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
18 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
19 motion must describe the circumstances with specificity, set forth in detail the reasons why the
20 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
21 entail, and suggest any additional means that could be used to reduce that risk. In addition, any
22 such motion must be accompanied by a competent declaration describing the parties' efforts to
23 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
24 and setting forth the reasons advanced by the Designating Party for its refusal to approve the

25 _____
26 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-
27 party, then the Expert should provide whatever information the Expert believes can be disclosed
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 disclosure.

2 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
3 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
4 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION**

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification shall include
11 a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue
13 in the other litigation that some or all of the material covered by the subpoena or order is subject
14 to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
15 and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
17 Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with the subpoena
19 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
20 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the
21 court from which the subpoena or order issued, unless the Party has obtained the Designating
22 Party's permission. The Designating Party shall bear the burden and expense of seeking protection
23 in that court of its confidential material – and nothing in these provisions should be construed as
24 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
25 another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE AND INADVERTENT PRODUCTION OF PROTECTED MATERIAL

10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated

1 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
2 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
4 of all the terms of this Order, and (d) request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 10.2 If any Producing Party inadvertently produces or discloses materials labeled
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” without marking it with an appropriate
8 designation, the Producing Party or a Designating Party shall promptly notify the Receiving Party
9 that the information should be treated in accordance with the terms of the Protective Order, and
10 shall forward appropriately-stamped copies of the items in question. Within ten (10) business days
11 of the receipt of substitute copies, the Receiving Party shall return or destroy the previously
12 unmarked items and all copies thereof. The inadvertent disclosure shall not be deemed a waiver of
13 confidentiality, and such designation shall be made as soon as possible after the discovery of the
14 inadvertent production or disclosure.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
16 **PROTECTED MATERIAL**

17 The production or disclosure of documents subject to a claim of privilege or other
18 protection (“Privileged Material”) by a Producing Party shall, to the maximum extent permitted
19 by law, be governed by federal law regarding the inadvertent production of Privileged Material.
20 The procedure set forth below is intended to provide the Producing Party or any other Party
21 purporting to hold a privilege with an efficient procedure for retrieving or “clawing back”
22 inadvertently produced Privileged Material, subject to any resolution of any dispute over the
23 privileged or protected status of the material, and for foreclosing any arguments of waiver.

24 (a) If a Producing Party or any other Party purporting to hold a privilege or other
25 protection has a good faith belief that Privileged Material has inadvertently been produced and
26 promptly upon discovery of the inadvertent production notifies all Parties in writing that Privileged
27 Material was disclosed, then the inadvertent production of Privileged Material shall not be deemed
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1 a waiver. If a Receiving Party reasonably believes that it has received the inadvertent production
2 of Privileged Material by a Producing Party, then it shall have a duty to promptly upon discovery
3 of the inadvertent production inform the Producing Party of the inadvertent production of
4 Privileged Material. The obligations of the Parties are those set forth in the Federal Rules of Civil
5 Procedure 26(b)(5)(B).

6 (b) Upon written request by the Producing Party or any other Party purporting to
7 hold a claim of privilege or other protection, the Receiving Parties shall (regardless of whether
8 they agree with the claim of privilege or other protection), within ten (10) business days of the
9 written request return all copies of such inadvertently produced document(s) or certify in writing
10 that all copies have been destroyed (including the return or destruction of any copies of
11 inadvertently produced document(s) provided to any other persons) and shall not use or disclose
12 any inadvertently produced material or information for any purpose unless and until the asserted
13 privileges or protections have been successfully challenged or withdrawn, except that the
14 Receiving Parties may sequester one copy of such inadvertently produced document(s) for the sole
15 purpose of presenting it within ten (10) business days to the court under seal for a determination
16 of the claim of privilege or other protection, in accordance with Civil Local Rule 79-5 regarding
17 sealed records and procedures for filing records under seal. No such challenge to a claim of
18 privilege or protection may assert the inadvertent or unintentional disclosure as a ground for
19 requiring production.

20 (c) If, during a deposition, a Party claims that a document being used in the
21 deposition is Privileged Material, it may at its sole discretion (i) allow the document to be used in
22 the deposition without waiver of its claim of privilege or other protection or (ii) instruct the witness
23 not to answer questions concerning the document pending a prompt resolution of any disagreement
24 concerning the document's privileged or other protected status. Immediately following the
25 deposition, the parties will meet and confer regarding the claim of privilege or protection and, if
26 no resolution is reached, the Receiving Parties' duties shall be those stated above for a Receiving
27 Party who is notified of inadvertently produced Privileged Material. If the Party claiming privilege
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1 or protection allowed the examination concerning the document to proceed on a non-waiver basis,
2 then counsel for the parties shall treat the transcript of such deposition as HIGHLY
3 CONFIDENTIAL and, further, shall not distribute such transcript or disclose the testimony to any
4 person, unless and until the claim of privilege or other protection is successfully challenged or
5 withdrawn, except the Receiving Parties may disclose the testimony to the court under seal, in
6 accordance with Civil Local Rule 79-5, in connection with a motion for a determination of the
7 claim of privilege or other protection within ten (10) business days. Nothing herein shall be deemed
8 or construed as a waiver of any applicable privilege, right of privacy, immunity from production
9 or proprietary interest with respect to any document or information.

10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
14 no Party waives any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
16 Party waives any right to object on any ground to use in evidence of any of the material covered
17 by this Protective Order.

18 12.3 Filing Protected Material. Without written permission from the Designating Party
19 or a court order secured after appropriate notice to all interested persons, a Party may not file in
20 the public record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
22 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
23 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
24 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
25 to protection under the law. If a Receiving Party's request to file Protected Material under seal
26 pursuant to Civil Local Rule 79-5(f) (concerning documents or information designated as
27 confidential by another Party or Non-Party) is denied by the court, then the Receiving Party may
28

1 file the Protected Material in the public record pursuant to Civil Local Rule 79-5(g)(2) unless
 2 otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in Section 4
 5 (DURATION), each Receiving Party must return all Protected Material to the Producing Party or
 6 destroy such material. As used in this subdivision, “all Protected Material” includes all copies,
 7 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
 8 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
 9 must submit a written certification to the Producing Party (and, if not the same person or entity, to
 10 the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate)
 11 all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
 12 has not retained any copies, abstracts, compilations, summaries or any other format reproducing
 13 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 15 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 16 product, and consultant and expert work product, even if such materials contain Protected Material.
 17 Any such archival copies that contain or constitute Protected Material remain subject to this
 18 Protective Order as set forth in Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20
 21
 22 DATED: April 21, 2022

Respectfully,

LEVI & KORSINSKY, LLP

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1 DATED: April 21, 2022

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16 DATED: April 21, 2022

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23 *Attorneys for the Underwriter Defendants*

24 Pursuant to Civil Local Rule No. 5-1(h)(3), all signatories concur in filing this Stipulated [Proposed]
25 Protective Order.

26 DATED: April 21, 2022

By: /s/ Adam M. Apton

27 Adam M Apton (316506)

28

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 4/22/2022

A handwritten signature in black ink, appearing to read "Haywood S. Gilliam, Jr.", written over a horizontal line.

Hon. Haywood S. Gilliam, Jr.
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ in the case of ***Roberts v. Bloom Energy Corp., 4:19-cv-02935-HSG***. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]